

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission’s Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	

**COMMENTS**



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## **Executive Summary**

ACA supports the Commission's conclusion that retention of its local broadcast television ownership rules is necessary in the public interest because these rules continue to serve its longstanding public interest goals of competition, localism and diversity. In review after review, the Commission has consistently and correctly found that restrictions on common ownership of television stations in local markets continue to be necessary in the public interest to protect competition for viewers in local markets and in local television advertising markets. In order for the local television ownership rule to continue to achieve this competition goal, the Commission must expand its broadcast attribution rules to cover the coordination of retransmission consent negotiations by separately owned same-market stations.

This expansion of the attribution rules is necessitated by recent developments in broadcast television markets, including the increasing importance industry-wide of retransmission consent fees as a source of revenue to local television stations; the increasing practice of separately owned same-market television stations coordinating retransmission consent negotiations; and the reduction in competition in designated market areas ("DMAs") when separately owned same-market broadcasters coordinate their retransmission consent negotiations.

The Commission must take into account that the most significant change in the marketplace since the time of the last quadrennial review is the substantial growth in retransmission consent revenue, and its increasing importance as a revenue source to local broadcast stations. In late November 2011, SNL Kagan reported that retransmission consent revenues had increased from \$214.6 million in 2006 to approximately \$1.4 billion in 2010 and, this revenue is projected to increase to \$3.9 billion by 2015. Moreover, according to Kagan, retransmission consent revenue has increased from one percent of total broadcast gross revenues in 2006 to five percent in 2010, and is projected to increase to 15 percent by 2015. According to the National Association of Broadcasters ("NAB"), retransmission consent is the second largest source of revenue for broadcasters.

The Commission must also take note of the impact on competition of the widespread and increasing practice of separately owned same-market broadcasters coordinating their retransmission consent negotiations. By examining publicly available documents and records, ACA has updated the list it filed in this docket in 2010 of instances in which separately owned same-market full power broadcast stations affiliated with top four rated (“Big 4”) national networks are operating under some form of sharing agreement. ACA reports that there are now 62 instances of these sharing agreements in 55 designated market areas (“DMAs”). The last time that ACA undertook the effort to identify these instances, it found a total of 56 in 50 DMAs. This represents a 10.7% net increase in the number of instances of sharing agreements among Big 4-affiliated stations in particular markets in less than two years. Of the 62 instances where multiple Big 4 affiliates in the same DMA are known to operate under a sharing agreement, ACA had a member that was able to confirm 46 instances, involving 41 DMAs, where retransmission consent negotiations were conducted by a single representative for two stations. When ACA last surveyed its members, it identified 36 instances in 33 markets. Therefore the net increase in the number of instances from 2010 to 2012 was 10 in eight DMAs or 27.8% since the last time ACA reported this information to the FCC.

In the past, the Commission has attributed specific types of sharing agreements, like local marketing agreements (“LMAs”) and joint sales agreements (“JSAs”), to promote local broadcast competition and to prevent evasion of the local television ownership rules. The Commission has typically deemed attributable agreements that convey influence and control from one competing station to another. However, beyond the issue of potential influence of one station over another, the Commission has also explicitly recognized that attribution may be appropriate when not attributing an agreement or arrangement could “lead to the exercise of market power” and “raise related competition concerns.”

The coordinated negotiation of retransmission consent where one broadcaster negotiates retransmission consent on behalf of another conveys sufficient influence over core operations of a

station to be deemed an attributable ownership interest. It conveys influence because one station is taking control of 100% of the retransmission consent revenue of the other station. This is the way that JSAs that involved more than 15% of radio advertising sales were found to convey influence or control to the brokering station, giving rise to attributable ownership interest for purposes of applying the Commission's multiple ownership rules. Agreements that give one television station the right to negotiate retransmission consent on behalf of a separately owned same-market television station should be deemed to create attributable ownership interests for the same reason.

The Commission must also deem activities that allow stations to engage in other forms of coordination of retransmission consent negotiations, for example where broadcasters directly communicate with one another and agree to follow a collective course of action. Irrespective of the issue of potential influence, these sorts of arrangements permit the exercise of market power by the participating stations and raises related local television competition concerns. Attribution of such agreements is necessary to prevent the possibility (and reality of) rule evasion that will undermine the operation of the Commission's broadcast ownership limits and allow stations to replace local competition with collusion for the purpose of increasing sales fees.

The competitive harm to competition and the degree of influence over another station conveyed by sharing agreements that facilitate the coordination of retransmission consent outweigh the *de minimis* benefit to local broadcasters of such agreements.

To put a decisive end to these competitive and public interest harms, the Commission should explicitly recognize as creating an attributable interest a broadcaster engaging in any of the following practices:

- Delegation of the responsibility to negotiate or approve retransmission consent agreements by one broadcaster to another separately owned broadcaster in the same DMA;
- Delegation of the responsibility to negotiate or approve retransmission consent agreements by two separately owned broadcasters in the same DMA to a common third party;
- Any informal or formal agreement pursuant to which one broadcaster would enter into a retransmission consent agreement with an MVPD contingent upon whether another

- separately owned broadcaster in the same market is able to negotiate a satisfactory retransmission consent agreement with the same MVPD; and
- Any discussions or exchanges of information between separately owned broadcasters in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.

With respect to formal agreements giving one broadcaster the authority to negotiate retransmission consent on behalf of another, there is no need to grandfather existing agreements among separately owned, same market broadcasters that may affect television licensees' compliance with the local television ownership rule as a result of these rule changes. Because disruption of business arrangements is likely to be minimal, in the case of agreements made attributable specifically on the basis that they facilitate coordinated retransmission consent negotiations, the Commission should immediately require the termination of such agreements. With respect to other practices that allow stations to engage in coordination of retransmission consent negotiations, likewise, these practices should not be grandfathered, and the broadcasters should be required to immediately cease and desist from engaging in them..

Adoption of these sensible and tailored amendments to the Commission's local television ownership rules will promote competition in local television markets, and protect MVPDs and their subscribers from the ill effects of covert consolidation in contravention of the Commission's television ownership limits from paying supra-competitive prices to access broadcast television signals delivered by subscription television services.

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**COMMENTS**



**I. INTRODUCTION**

The American Cable Association files these comments in response to the Notice of Proposed Rulemaking in the above-referenced docket.<sup>1</sup> ACA supports the Commission’s conclusion that retention of its local broadcast television ownership rules is necessary in the public interest because they continue to serve its longstanding public interest goals of competition, localism and diversity. In each of its media ownership reviews, the Commission has consistently found that restrictions on

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<sup>1</sup> *In the Matter of 2010 Quadrennial Regulatory Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership In the Broadcasting Services*; MB Docket No. 09-182, MB Docket No. 07-294, Notice of Proposed Rulemaking (rel. Dec. 22, 2011)(“NPRM”).



common ownership of television stations in local markets continue to be a public interest necessity to protect competition for viewers in local markets and in local television advertising markets.<sup>2</sup>

In this quadrennial review of its media ownership rules, the Commission must update its television attribution rules to reflect current market conditions and to ensure that separately owned same-market stations are not lessening head-to-head competition with other stations by entering into agreements that facilitate the coordination of retransmission consent negotiations. Failure to stem the rising tide of such agreements will facilitate evasion of the Commission's carefully calibrated local television ownership rules, and leave un-remedied the harm to multichannel video programming distributors ("MVPDs") and the viewing public of this anticompetitive behavior.

Changed conditions in the marketplace, including the substantial growth in retransmission consent fees and their increasing importance as a bottom-line revenue source for local television stations, require the Commission to take account of the impact that the practice of separately owned same-market broadcasters coordinating their retransmission consent negotiations has on local television competition. This practice is becoming increasingly prevalent. In these instances, where broadcasters collude rather than compete against one another, the adverse impact on competition is no different than the impact made possible through a merger of the participating stations because these arrangements result in a single firm obtaining significantly higher compensation from other market players than would otherwise be the case, without any requirement that the broadcaster improve its product.

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<sup>2</sup> *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) ("2002 Biennial Review Order"); *In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008) ("2006 Quadrennial Review Order"); *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, Report and Order, 14 FCC Rcd 12903 (1999) ("1999 TV Duopoly Order"); NPRM (tentative conclusion).

To address this growing problem, the Commission must update its broadcast attribution rules to cover the coordination of retransmission consent negotiations by separately owned same-market television stations. Specifically, the Commission must deem all forms of agreements that permit one television station to provide another with formal authority to negotiate retransmission consent on its behalf attributable. Further, the Commission's rules must also address other activities that allow stations to coordinate their retransmission consent negotiations, such as where broadcasters directly communicate with one another and agree to follow a collective course of action, although each broadcaster negotiates on its own. Attribution of all forms of coordination of retransmission consent negotiations that accomplish the same collusive result as if broadcasters were under common ownership is necessary to promote competition in local television markets and prevent evasion of the Commission's local television ownership rules.

## **II. THE COMMISSION MUST TAKE ACCOUNT OF NEW DEVELOPMENTS IN BROADCAST MARKETS IN ITS QUADRENNIAL REVIEW OF ITS MEDIA OWNERSHIP RULES, INCLUDING RETRANSMISSION CONSENT**

### **A. The Commission Must Take Account of the Substantial Growth in Importance Industry-wide of Retransmission Consent Fees as a Source of Revenue to Local Television Stations**

The Commission's longstanding media ownership policy goals are fostering competition, localism and diversity<sup>3</sup> and its broadcast ownership and attribution rules are the means by which these goals are achieved within the television broadcasting industry. Congress has charged the Commission with evaluating its media ownership rules every four years to determine, among other assessments, whether they are "necessary in the public interest as a result of competition."<sup>4</sup> As the Commission correctly observed in the NPRM, part of its "challenge in this proceeding is to take

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<sup>3</sup> See NPRM ¶ 10.

<sup>4</sup> NPRM ¶ 1; Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, 99-100 (2004) (amending Sections 202(c) and 202(h) of the 1996 Act).

account of new technologies and changing marketplace conditions while ensuring that [its] media ownership rules continue to serve [its] public interest goals.”<sup>5</sup>

Changed marketplace conditions today necessitate that the Commission take account of the growing importance industry-wide of retransmission consent revenues to local stations in consideration of whether its existing local television ownership and attribution rules can achieve the policy goal of preserving local media competition and thereby serve the public interest.

The most significant change in the marketplace since the time of the last quadrennial review is the substantial growth in retransmission consent revenue, and its increasing importance as a revenue source to local broadcast stations. In late November 2011, SNL Kagan reported that retransmission consent revenues had increased from \$214.6 million in 2006 to approximately \$1.4 billion in 2010 and, this revenue is projected to increase to \$3.9 billion by 2015.<sup>6</sup> According to Kagan, retransmission consent revenue has increased from one percent of total broadcast gross revenues in 2006 to five percent in 2010, and is projected to increase to 15 percent by 2015.<sup>7</sup> There are frequent reports of articles or analyses of broadcaster financial performance that describe the year-to-year increase and total revenue now available due to retransmission consent.<sup>8</sup> The National Association

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<sup>5</sup> NPRM ¶ 1.

<sup>6</sup> Robin Flynn, SNL Kagan, Broadcast Investor, “Boosting retrans projections as TV station owners succeed in pushing rates” (Nov. 22, 2011) (“Kagan”); see also Staff, TVNewsCheck, *Retrans Revenue To Top \$3.6B Through 2017*, available at <http://www.tvnewscheck.com/article/2011/05/25/51472/retrans-revenue-to-top-36b-through-2017> (last visited Mar. 5, 2012) (reporting that SNL Kagan has projected that total industry retrans fees could increase from \$1.14 billion in 2010 to \$3.61 billion by 2017, with average per-sub fees for cable MSOs potentially more than doubling over time from their levels through 2017).

<sup>7</sup> *Id.*

<sup>8</sup> *Fisher Communications’ Fourth Quarter and Full-Year 2011 Financial Results Driven by Strong Performance of Company’s Core Broadcast Stations and Growing Momentum of Digital Portfolio*, Press Release, Marketwire, (rel. Mar. 1, 2012), available at [http://www.marketwatch.com/story/fisher-communications-fourth-quarter-and-full-year-2011-financial-results-driven-by-strong-performance-of-companys-core-broadcast-stations-and-growing-momentum-of-digital-portfolio-2012-03-01?reflink=MW\\_news\\_stmp](http://www.marketwatch.com/story/fisher-communications-fourth-quarter-and-full-year-2011-financial-results-driven-by-strong-performance-of-companys-core-broadcast-stations-and-growing-momentum-of-digital-portfolio-2012-03-01?reflink=MW_news_stmp) (including retransmission consent as rationale for strong fourth quarter); *Gray Reports Strong Non-Political 4Q Rev*, Press Release, TVNewsCheck.com (rel. Feb. 24, 2012), available at <http://www.tvnewscheck.com/article/2012/02/24/57677/gray-reports-strong-nonpolitical-4q-rev> (listing retransmission consent revenue increasing to \$5 million for the quarter); *Scripps Reports Fourth-Quarter*

of Broadcasters (“NAB”) expressly recognized the growing importance of retransmission consent revenues to local television stations in a 2010 filing with the Commission in which it provided data and analysis demonstrating that “the median local station derives 6.3% of its total revenues from retransmission consent fees . . . the second largest single source of revenue for stations, behind only advertising.”<sup>9</sup>

Previously the Commission’s local television ownership rules focused primarily on the impact on advertising and audience share of various ownership combinations.<sup>10</sup> In light of the fact that retransmission consent revenues are rapidly growing and are becoming an increasingly important revenue source for local stations – now second to advertising as single source of station revenues – the Commission must take retransmission consent into account in its analysis of whether its existing rules are adequate to promote competition in local markets between.

**B. The Commission Must Take Account of the Widespread and Increasing Practice of Separately Owned Same-Market Television Stations Coordinating Retransmission Consent Negotiations.**

In addition to taking into account the fact that retransmission consent revenue levels are growing industry-wide and becoming an increasingly important revenue source for broadcasters, the Commission must also evaluate the impact on competition of the widespread and increasing practice of separately owned same-market broadcasters coordinating their retransmission consent negotiations.

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*Results*, Press Release, PR Newswire, (rel. Feb. 24, 2012), *available at* <http://www.marketwatch.com/story/scripps-reports-fourth-quarter-results-2012-02-24> (reporting increased retransmission consent revenue of 30% year over year).

<sup>9</sup> *In the Matter of Amendment of the Commission’s Rules related to Retransmission Consent*, Comments of the National Association of Broadcasters, MB Docket No. 10-71, at 51 (filed May 27, 2011) (“NAB Retrans NPRM Comments”).

<sup>10</sup> See, e.g., 1999 TV Duopoly Order, ¶ 66 (discussing retention of the “top four ranked station” component of local television duopoly rule in light of the fact that these “stations generally have a large share of the audience and advertising market in their areas, and requiring them to operate independently will promote competition.”).

By examining publicly available documents and records, ACA has updated the list it filed in this docket of instances in which separately owned same-market full power broadcast stations affiliated with Big 4 networks are operating under some form of sharing agreement.<sup>11</sup> ACA reports that there are now 62 instances of these sharing agreements in 55 designated market areas (“DMAs”).<sup>12</sup> The last time that ACA undertook the effort to identify these instances, ACA identified a total of 56 in 50 DMAs.<sup>13</sup> Therefore the net number of instances increased by 10.7%, and the net number of DMAs increased by 10% since the last time ACA reported this information to the FCC.<sup>14</sup>

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<sup>11</sup> In 2010, ACA submitted in this docket information gathered from publicly available documents and records showing that separately owned full power stations in the same market that are affiliated with Big 4 networks are operating under some form of sharing agreement. In addition, ACA submitted data and analysis based on reports from ACA members and other MVPDs, demonstrating that 36 pairs of Big 4 broadcasters in 33 markets had coordinated their retransmission consent negotiations using a single negotiator for both stations within the last three years. In every instance, the broadcasters coordinating their retransmission consent negotiations were operating under some sort of sharing agreement. *In the Matter of 2010 Quadrennial Regulatory Review, Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of the American Cable Association, MB Docket No. 09-182, at 9, Appendix A (filed June 22, 2010) (“ACA Media Ownership NOI Comments”); *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Comments of the American Cable Association, MB Docket No. 10-71, at 7 (filed May 27, 2011) (“ACA Retrans Comments”). ACA had also reported in 2011 that it have found 56 instances of Big 4 broadcasters operating under a sharing agreement. See ACA Retrans Comments at 7 n.6, Appendix B (explaining that in ACA Media Ownership NOI Comments at 9, Appendix A, Table 2, the table referenced showed 57 instances of multiple Big 4 affiliates operating under some sort of sharing agreement. ACA subsequently determined that one of the listed instances (Ft. Smith-Fayetteville-Springdale-Rogers, AR) was erroneously placed in this table and is actually a case of common ownership. Removal of this market leaves 56 instances of sharing agreements); see also *In the Matter of Petition for Rulemaking to Amend the Commission’s Rules Governing Retransmission Consent*, MB Docket No. 10-71, Comments of the American Cable Association, at Appendix C (filed May 18, 2010) (“ACA Petition Comments”).

<sup>12</sup> See Appendix A, Table 1.

<sup>13</sup> ACA Media Ownership NOI Comments at 9, Appendix A, Table 2.

<sup>14</sup> Of the six new instances reported by ACA on its updated list, five are instances of sharing agreements that didn’t exist at the time ACA last submitted its list (West Palm Beach-Ft. Pierce; Tuscon (Sierra Vista); Topeka, Anchorage; and Idaho Falls/Pocatello(Jackson)) and three are instances of sharing agreements that ACA failed to identify the last time it submitted its list (Traverse City-Cadillac; Columbus-Tupelo-W Pnt-Hstn; and Casper-Riverton). ACA removed two instances from its updated list because publicly available documents and records indicated that broadcasters were no longer in some kind of sharing agreement (Ottumwa-Kirksville) or one of the stations in some kind of sharing agreement were no longer a Big 4 affiliate (Springfield (Nexstar/Mission)). In addition, there is pending a 63<sup>rd</sup> instance. In Toledo, OH, Lin Media is in the process of selling Fox affiliate WUPW to American Spirit Media. Upon completion of the deal, American Spirit Media will allow Raycom Media to operate the station in tandem with its CBS affiliate WTOL under a shared services agreement. Kris Turner, *Channel 36’s owner plans to lay off 63*, Toledo Blade, available at <http://www.toledoblade.com/TV-Radio/2012/03/01/Channel-36-s-owner-plans-to-lay-off-63.html> (last visited Mar. 5, 2012).

In order to identify the number of instances of coordinated retransmission consent negotiations<sup>15</sup>, ACA asked its members who operate in the markets of the broadcasters named in the 62 instances the following question:

In the last year, have you simultaneously negotiated retransmission consent for 2 separately owned big 4 networks (i.e. ABC, NBC, CBS, or FOX) in the same TV market with a single representative for both broadcasters?

In 52 of the 62 instances in where separately owned, same market broadcasters affiliated with a Big 4 Network were operating under some form of sharing agreement, ACA was able to obtain a response from at least one of its members.<sup>16</sup> Of these 52 responses, ACA was able to confirm 46 instances, involving 41 DMAs, where retransmission consent negotiations were conducted by a single representative for two stations. The last time ACA surveyed its members, it identified 36 instances in 33 markets.<sup>17</sup> Therefore the number of instances increased by 10 instances in 8 DMAs or 27.8% since the last time ACA reported this information to the FCC.<sup>18</sup>

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<sup>15</sup> While broadcasters appear to generally make known when sharing agreements exist between stations, they rarely publicly disclose the terms of these arrangements. Thus, it is difficult to determine from publicly available information whether or not a sharing agreement includes the assignment of retransmission consent negotiation rights.

<sup>16</sup> ACA could not receive a response from its members for 10 instances. ACA did not have members in the market of 8 instances (West Palm Beach, FL; Honolulu, HI; Rochester, NY; El Paso, TX, Monterey-Salinas, CA; Utica, NY; Grand Junction-Montrose, CO; and Victoria, TX), and ACA members did not negotiate retransmission consent with the broadcasters in the last year in the other two instances (Tri-Cities, TN-VA and Traverse City-Cadillac, MI).

<sup>17</sup> ACA Media Ownership NOI Comments at 9, Appendix A; ACA Retrans Comments at 7.

<sup>18</sup> See Appendix A, Table 2. Of the ten net new instances of coordinated retransmission consent negotiations, there were 14 new instances reported in 2012, and four instances that weren't reported, for a net of 10 additional instances. Nine of the new instances appeared on ACA's 2010 list of instances in which broadcasters operated under some kind of sharing agreement, but at that time, no ACA member was able to confirm that these broadcasters used a single negotiating representative. These markets are (i) Dayton, OH; (ii) Lincoln and Hastings-Kearney, NE; (iii) Augusta, GA; (iv) Peoria-Bloomington, IL (Granite/Barrington); (v) Peoria-Bloomington, IL (Nexstar/Sinclair); (vi) Wichita Falls-Lawton; (vii) Sioux City; (viii) Joplin-Pittsburg; (ix) Rochester-Mason City-Austin. Five of the new instances did not originally appear on ACA's initial list of instances in which broadcasters operated under some kind of sharing agreement, (Topeka; Anchorage; Traverse (Heritage/Cadillac); Columbus; and Casper-Riverton). In the last list, ACA reported four instances of broadcasters using the same negotiator, but ACA could not re-confirm these broadcasters negotiated in this way in the last year and were removed from this year's list (Syracuse; Springfield (Nexstar/Mission); Traverse (Barrington/Tucker); and Corpus Christi).

A recent example of the harmful impact of separately owned same-market broadcasters coordinating their negotiations is illustrated by the ongoing retransmission consent dispute between an MVPD and multiple local Big 4-affiliated stations in Wyoming. ABC affiliate K2WO of the Casper/Riverton, WY DMA acknowledges on its website that the station, along with four other Wyoming broadcasters affiliated with Big 4 networks, spanning two DMAs, are using a single negotiator to negotiate with an MVPD on behalf of all the stations.

K2TV and four other stations across Wyoming are no longer on Dish network, because the satellite service has not agreed to a new contract. [sic] the other stations involved are KGWC-CBS and KFNB-FOX in Casper, as well as KLWY-FOX and K2's ABC signal in Cheyenne.

Part owner of Mark-3 Media and K2 consultant Mark Nalbone *is negotiating for the stations*. [sic] he says Dish rejected a fair market value offer to continue carrying the signals. He adds that Dish has been very slow in negotiations, going back to September.<sup>19</sup>

**C. The Commission Must Take Account of the Reduction in Competition in Local Television Markets When Separately Owned Same-Market Broadcasters Coordinate their Retransmission Consent Negotiation.**

ACA has demonstrated in several filings with the Commission that coordinated retransmission consent negotiations by separately owned, same market broadcasters lessen competition in local broadcast markets, as evidenced by these broadcasters ability to drive up prices beyond levels achievable if each station were to negotiate retransmission consent separately.<sup>20</sup> In these instances, broadcasters collude, rather than compete against one another for retransmission consent fees.<sup>21</sup> The adverse impact on competition among broadcasters of such coordinated retransmission consent negotiations is no different than the impact made possible through merger,

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<sup>19</sup> "Update: K2TV, Others, Taken off Dish Network," available at <http://www.k2tv.com/news.php?id=1144> (last visited Mar. 5, 2012).

<sup>20</sup> See ACA Media Ownership NOI Comments at 5-10; ACA Petition Comments at 11-14; ACA Retrans Comments at 20-22; ACA Retrans Reply Comments at 77-85.

<sup>21</sup> See ACA Media Ownership NOI Comments at 5-10, 19-20; ACA Retrans Comments at 21-22; ACA Retrans Reply Comments at 33-37.

which are not countenanced for top four rated television stations in the same market under the Commission's local television station ownership limits.<sup>22</sup>

An initial economic analysis done by ACA's economic expert, Professor William P. Rogerson, demonstrated that standard economic theory predicts that if two otherwise competing Big 4 broadcasters in the same market are able to collectively negotiate to maximize their joint profit, they will be able to charge higher retransmission consent fees than if the two networks were separately owned or controlled so long as the networks are partial substitutes for one another, as are broadcast networks.<sup>23</sup> Professor Rogerson explained that by operating under coordinated control for the purpose of negotiating retransmission consent, Big 4 affiliates are able to "act as a single entity for purposes of negotiating retransmission consent prices . . . [and] this coordinated activity allows broadcast stations to negotiate higher retransmission consent fees than they would otherwise be able to."<sup>24</sup>

ACA's assertions concerning the effects of coordinated negotiations on retransmission consent prices do not rest solely on economic theory. Available empirical evidence submitted by cable operators forced to negotiate with broadcasters that coordinated their retransmission consent negotiations suggests that common control or ownership of multiple Big 4 affiliates in a single market results in significantly higher retransmission consent fees, ranging from 21.6% to 161% higher than for separately-owned or controlled broadcast affiliates.<sup>25</sup> Professor Rogerson observed that agreements among non-commonly owned same-market broadcasters "essentially reduce the extent

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<sup>22</sup> 47 C.F.R. § 73.3335(b).

<sup>23</sup> ACA Petition Comments at 9-14; Rogerson I at 7-8; ACA Retrans Comments at 9; William P. Rogerson, Professor of Economics, Northwestern University, "Coordinated Negotiation of Retransmission Consent Agreements by Separately-Owned Broadcasters in the Same Market", at 6, 11 ("Rogerson II").

<sup>24</sup> William P. Rogerson, Professor of Economics, Northwestern University, "Joint Control or Ownership of Multiple Big 4 Broadcasters in the Same Market and Its Effect on Retransmission Consent Fees," May 18, 2010, at 3 ("Rogerson I").

<sup>25</sup> ACA Retrans Comments at 10-11.



to which [local stations] compete with one another, and suggested that, on a going forward basis, the Commission should take the harm of higher retransmission consent prices into account as a factor under its broadcast multiple ownership rules.<sup>26</sup>

The U.S. Department of Justice (“DOJ”) has also recognized that coordinated retransmission consent negotiations among separately owned broadcast stations in the same market can trigger significant public interest and competitive concerns under federal policy, regulations and laws.<sup>27</sup> The DOJ has initiated at least one antitrust action against separately owned broadcasters based on the combined control of the retransmission consent negotiations of multiple same-market broadcast stations through “agreements, understandings and concerted actions among the Defendants to increase the price of retransmission consent rights to cable companies.”<sup>28</sup> The DOJ alleged that three broadcast stations in the Corpus Christi DMA illegally conspired to raise retransmission consent fees by jointly negotiating retransmission consent and promising each other that they would not formally sign with and release their signals to a cable operator until the other two local broadcasters came to terms with that cable firm. This behavior was alleged, *inter alia*, to have the effect of “restraining, suppressing and eliminating competition [among broadcasters] for cable services;” “increasing the cost of retransmission rights to the cable companies;” and “depriving cable companies and consumers of the benefits of free and open competition.”<sup>29</sup> DOJ explained in the

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<sup>26</sup> Rogerson I at 4.

<sup>27</sup> *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, ¶ 23 (2011) (“Retransmission Consent NPRM”) (proposing to prohibit, as a per se violation of the duty to negotiate in good faith, agreements by which one local broadcaster gives another the right to negotiate or the power to approve its retransmission consent agreements when the stations are not commonly owned; “[s]uch consent might be reflected in local marketing agreements (“LMAs”), Joint Sales Agreements (“JSAs”), shared services agreements, or other similar agreements.”); 47 U.S.C. §§ 309 & 325; see also 47 C.F.R. §73.3555; 47 C.F.R. § 76.65; see *U.S. v. Texas Television, Inc., Gulf Coast Broadcasting Co., and K-Six Television, Inc.*, Complaint, (Feb. 2, 1996), available at <http://www.justice.gov/atr/cases/f0700/0745.pdf> (last visited Dec. 22, 2011 ) (“Corpus Christi Complaint”).

<sup>28</sup> See Corpus Christi Complaint. See also *U.S. v. Texas Television, Inc., Gulf Coast Broadcasting Co., and K-Six Television, Inc.*, Competitive Impact Statement, available at <http://www.justice.gov/atr/cases/f0700/0746.pdf> (last visited Mar. 5, 2012) (“Corpus Christi Competitive CIS”).

<sup>29</sup> Corpus Christi Complaint, Section V, Effects, ¶ 20.

Competitive Impact Statement that the “broadcasters’ collusion succeeded in extracting more favorable terms from the cable companies than they would have otherwise obtained. . . .”

Although the 1992 Cable Act gave broadcasters the right to seek compensation from retransmission of their television signals, the antitrust laws require that such rights be exercised individually and independently by broadcasters. When competitors in a market coordinate their negotiations so as to strengthen their negotiating positions against third parties and so obtain better deals, as did these Defendants, their conduct violates the Sherman Act.<sup>30</sup>

The matter was settled when the three stations agreed to terminate the collusive practice and refrain from engaging in such practices in the future.

It is noteworthy that the Commission too appears to have accepted that coordinated retransmission consent negotiations are harmful in its retransmission consent rulemaking by proposing to adopt a rule targeting formal agreements through which one local broadcaster gives another the right to negotiate or the power to approve its retransmission consent agreement when the stations are not commonly owned.<sup>31</sup>

### **III. THE COMMISSION MUST RETAIN ITS PROHIBITION ON MERGERS BETWEEN TWO OF THE TOP FOUR RATED STATIONS IN A LOCAL MARKET AND ITS DUOPOLY OWNERSHIP NUMERICAL LIMIT**

In the *2006 Quadrennial Review Order*, the Commission retained its local television duopoly rule in recognition of the fact that local television station ownership limits promote competition for viewers and advertisers within a local market, and that our communities are best served when numerous rivals compete for local advertising and audience share by increasing the quality of their

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<sup>30</sup> Corpus Christi Competitive CIS at 8 (emphasis supplied).

<sup>31</sup> Retransmission Consent NPRM ¶ 23 n. 75 (citing comments filed by ACA observing “that while Section 73.3555(b) of the Commission’s rules generally prohibits common ownership of multiple Big 4 stations in a single DMA, ‘broadcasters circumvent this general prohibition through the Commission’s waiver process, or via contractual agreements that offer one Big 4 station control of another in the same market.’”); *id.* at Appendix B, Proposed Rule Changes, § 76.65(b)(1)(ix) (making a per se violation of good faith negotiation standard, “Agreement by a broadcast television station Negotiating Entity to grant another station or station group the right to negotiate or the power to approve its retransmission consent agreement when the stations are not commonly owned”).

program offerings.<sup>32</sup> As the Commission has previously explained, “[o]ur competition goal seeks to ensure that for each television market, numerous strong rivals are actively engaged in competition for viewing audiences.”<sup>33</sup>

In the instant NPRM, the Commission has once again correctly concluded that retention of the local television ownership rule, including the prohibition against mergers among the top four rated stations is necessary in the public interest to promote competition in local television markets.<sup>34</sup> ACA supports the Commission's conclusion that it must retain the local television ownership rule because it promotes competition among broadcast television stations in local television viewing markets.<sup>35</sup> As the Commission correctly noted, local television broadcast stations compete directly with each other, thus necessitating retention of its prohibition on mergers between two of the top-four rated stations in a local market and its duopoly ownership numerical limit.<sup>36</sup>

The Commission has previously concluded that mergers between these stations “would be most deleterious to competition,” because they would often result in a single firm obtaining significantly larger market share than other firms in the market and would reduce incentives for local stations to improve programming that appeals to mass audiences.<sup>37</sup> Nothing has changed in the marketplace to render these conclusions any less true today. The same is true of retention of the numerical limits prohibiting ownership of more than two stations in a single market under specified circumstances, particularly stations affiliated with one of the Big 4 networks. The duopoly rule continues to play an important role in promoting competition among local broadcasters, and remains

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<sup>32</sup> See, e.g., 2006 Quadrennial Review Order, ¶¶ 95-97.

<sup>33</sup> 2002 Biennial Review Order, ¶ 150.

<sup>34</sup> NPRM ¶¶ 8, 32-44.

<sup>35</sup> *Id.* ¶ 33.

<sup>36</sup> *Id.* ¶¶ 33, 40.

<sup>37</sup> *Id.* ¶ 40, citing 2006 Quadrennial Review Order ¶ 102.

a public interest necessity to ensure a healthy level of local competition among its broadcast licensees.

**IV. THE COMMISSION MUST EXPAND ITS ATTRIBUTION RULES TO COVER THE COORDINATION OF RETRANSMISSION CONSENT NEGOTIATIONS BY SEPARATELY OWNED SAME-MARKET STATIONS**

ACA fully supports the Commission's decision to address issues raised concerning the impact of certain agreements on its "ownership rules and fundamental policy goals." Specifically, ACA submits that the Commission's broadcast attribution rules must be expanded to cover the coordination of retransmission consent negotiations by separately owned same-market television stations that adversely impact local television competition whether occurring under sharing agreements or informal arrangements by which non-commonly owned broadcasters coordinate their negotiations with MVPDs.<sup>38</sup>

The Commission's broadcast attribution rules constitute "the mechanism by which the multiple ownership rules are given practical effect."<sup>39</sup> The attribution rules define which financial or other interests in a licensee must be counted in applying the broadcast ownership rules.<sup>40</sup> The attribution rules seek to identify those interests in licensees that confer on their holders a degree of "influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."<sup>41</sup> Influence and control are considered

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<sup>38</sup> NPRM ¶¶ 204-207.

<sup>39</sup> *In the Matter of Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, Report and Order, FCC 84-115, at 999 (1984).

<sup>40</sup> NPRM ¶ 194.

<sup>41</sup> *Id.*; see also *In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, Notice of Proposed Rulemaking, 19 FCC Rcd 15238, ¶ 3 (2004) ("2004 TV JSA Attribution NPRM"); *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable / MDS Interests*, Report and Order, 14 FCC Rcd 12559, ¶ 1 (1999) ("1999 Attribution Order").

“important criteria with respect to the attribution rules because . . . these rules define which interests are significant enough to be counted for purposes of the Commission’s multiple ownership rules.”<sup>42</sup>

Beyond the issue of potential influence by one station over another, the Commission has also acknowledged that the attribution rules also seek to identify arrangements that “could lead to the exercise of market power” and “raise related competition concerns.”<sup>43</sup> In particular, the Commission has found that certain arrangements among separately owned stations in the same market may raise concerns regarding the ability of other broadcasters in the market who are not in these arrangements “to compete, and may negatively affect the health” of the local broadcast industry in general.<sup>44</sup> The Commission has considered the impact on local competition if certain arrangements among separately owned stations are *not* attributed for multiple ownership purposes.<sup>45</sup>

The Commission has previously attributed various types of ownership stakes and specific forms of station-related sharing agreements for purposes of applying its broadcast ownership rules.<sup>46</sup> As demonstrated below, under relevant Commission precedents, the Commission must deem attributable all forms of agreements whereby one television station provides another station with formal authority to negotiate retransmission consent on its behalf. The Commission must also deem activities that allow stations to engage in coordination of their retransmission consent negotiations through less formal means, such as where broadcasters directly communicate with one another and agree to follow a collective course of action. Attribution of both formal agreements where one separately owned broadcaster delegates negotiating authority to another in the same market and less formal arrangements that accomplish the same collusive result is necessary to promote

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<sup>42</sup> 2004 TV JSA Attribution NPRM ¶ 3.

<sup>43</sup> *Id.* ¶ 15.

<sup>44</sup> *Id.*

<sup>45</sup> 2002 Biennial Review Order ¶ 320; 2004 TV JSA Attribution NPRM ¶ 15.

<sup>46</sup> See, e.g., NPRM ¶¶ 194-197.

competition in local television markets and prevent evasion of the Commission's local television ownership rules.

Given the widespread and increasing practice of separately owned same-market broadcasters coordinating their retransmission consent negotiations, and the fact that this practice lessens local broadcast competition, attribution is essential if the Commission's multiple ownership rules are to achieve their goal of promoting local competition. Agreements in which one broadcast station negotiates retransmission consent on behalf of another should be deemed attributable because they convey sufficient influence over core operations of one station over another to be deemed attributable ownership interests. Beyond the issue of influence, attribution is necessary for other arrangements that facilitate the coordination of retransmission consent to prevent the exercise of market power and cause other related competition concerns.

**A. Agreements to Coordinate Retransmission Consent Among Separately Owned Same-Market Broadcasters Convey Sufficient Influence Over Core Operations of a Station to be Deemed Attributable Ownership Interests.**

In considering revisions to its attribution rules, the Commission has "sought to identify and include those positional and ownership interests that convey a degree of influence or control to their holder sufficient to warrant limitation under our ownership rules."<sup>47</sup> Where the Commission has referred to "influence" it has "viewed it as an interest that is less than controlling, but through which the holder is likely to induce a licensee to take actions to protect the interest of the holder."<sup>48</sup>

Our judgment as to what level of influence should be subject to restriction by the multiple ownership rules has, in turn, been based on our judgment regarding what interests in a license convey a realistic potential to affect its programming and other core operational decisions.<sup>49</sup>

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<sup>47</sup> 2002 Biennial Review Order ¶ 318.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

As the NPRM recites, the Commission added various types of station resource sharing agreements to the list of attributable interests cognizable under its broadcast ownership rules under an evolving set of policy rationales.<sup>50</sup> The history of the Commission's decision to attribute radio JSAs is particularly instructive given its similarities to agreements that facilitate the coordination of retransmission consent, and provides an appropriate policy framework for analysis.

In its 1999 Attribution Order, the Commission addressed the question whether to attribute two forms of broadcast sharing agreements, LMAs and JSAs.<sup>51</sup> The Commission adopted a new rule making *per se* attributable television LMAs, or time brokerage agreements, for more than fifteen percent of the brokered stations' broadcast hours per week, but declined to change its earlier decision permitting radio and television JSAs. The Commission reasoned that it was necessary to *per se* attribute television LMAs, as it had done with radio LMAs in 1992,<sup>52</sup> to same-market television stations because they convey a level of control or influence that would realistically allow holders to affect programming or other core station functions<sup>53</sup>

In 2002, the Commission reversed its decision with regard to radio JSAs, and deemed them attributable. In explaining its prevision decision to refrain from attributing JSAs while attributing LMAs, the Commission stated:

We have previously distinguished JSAs and LMAs, finding that only LMAs have the ability to affect programming, personnel, advertising, physical facilities, and other core operations of stations. There are several reasons for our policy change. Upon reexamination of the attribution issue, we find that, because the broker controls the advertising revenue of the brokered station, JSAs have the same potential as LMAs to convey sufficient influence over core operations

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<sup>50</sup> NPRM ¶ 197.

<sup>51</sup> 1999 Attribution Order ¶¶ 66, 83-87 (addressing attribution of television LMAs, defined as a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot advertising to support the programming, for the first time under its broadcast ownership rules); 1999 Attribution Order ¶¶ 117-123 (addressing decision to continue to decline attributing radio and television JSAs on a *per se* basis, subject to compliance with the antitrust laws).

<sup>52</sup> 1999 Attribution Order ¶¶ 83, 85 & n.183.

<sup>53</sup> *Id.* ¶ 68 ("the use of time brokerage to circumvent the local ownership rules").

of a station to raise significant competition concerns warranting attribution.<sup>54</sup>

Recognition of the degree of control or influence by one television station over the advertising sales of a competition station provided the Commission grounds to adopt the *per se* attribution of JSAs under the Commission's multiple ownership rules.<sup>55</sup> In doing so the Commission recognized that although JSAs "might produce public interest benefits," on balance they nonetheless "may convey sufficient influence or control over advertising to be considered attributable."<sup>56</sup>

Although the logic of the Commission's decision to attribute radio JSAs would appear equally applicable to television JSA, because it had failed to raise the issue of television JSA attribution in the 2002 Biennial Review Notice of Proposed Rulemaking, the Commission determined that it could not, consistent with the Administrative Procedure Act, simultaneously consider the question of whether to deem television JSAs attributable.<sup>57</sup> Subsequently, the Commission initiated a Notice of Proposed Rulemaking proposing to deem television JSAs attributable on the grounds that "JSAs have the same effect in local TV markets that they have in local radio markets and should be treated similarly."<sup>58</sup>

A broadcast station that delegates the responsibility to negotiate or approve retransmission consent agreements to another separately owned station in the same designated market area ("DMA") relinquishes sufficient influence over core station operations to warrant attribution. This sort of agreement results in one television station having control (or influence) over another competing

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<sup>54</sup> 2002 Biennial Review Order ¶ 320.

<sup>55</sup> *Id.* See 1999 Attribution Order ¶ 123; *Shareholders of the Ackerly Group, Inc. (Transferor) and Clear Channel Corp. (Transferee)*, 17 FCC Rcd 10828 (2002). In the case of radio JSAs, an agreement will be *per se* attributable to the brokering station if it conveys control over more than 15% of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station. 47 C.F.R. § 73.3555(k)(1).

<sup>56</sup> 2002 Biennial Review Order ¶ 322.

<sup>57</sup> *Id.* ¶ 316, n. 688.

<sup>58</sup> 2004 TV JSA Attribution NPRM ¶ 2.



station's negotiations for the sale of retransmission consent to an MVPD. As noted above, retransmission consent revenues are an increasingly important revenue source for broadcast stations, and according to NAB, retransmission consent payments are second only to advertising revenues as a measure of a station's financial performance. For the same reason that the Commission decided to attribute radio JSAs, agreements among separately owned television stations that gave one station the right to negotiate the sale of a substantial amount of a key broadcast station product (advertising, in the case of JSAs; retransmission consent, in the case of other forms of agreements) to a second separately owned station in the same market should be deemed attributable for purposes of the multiple ownership rules.

The NPRM asks whether certain sharing agreements are substantively equivalent to agreements already subject to the Commission's attribution rules, and therefore either are or should be attributable today. ACA submits that agreements among separately owned same-market broadcasters in which one station grants another station the right to negotiate retransmission consent on its behalf convey influence and control over a core station function in a manner that is substantively equivalent to joint sales agreements and therefore should be deemed attributable for the same reasons. An agreement by one local station to put its retransmission consent pricing decisions (the second most important single source of station revenues) in the hands of a competing station is a core station operation equivalent to placing control over sales of a substantial amount of a station's advertising in the hands of a competitor.

**B. Beyond the Issue of Potential Influence, the Coordination of Retransmission Consent Negotiations Permits the Exercise of Market Power and Raises Related Competition Concerns.**

The Commission has explicitly recognized that "influence or control" may not provide the sole justification for deeming certain broadcaster arrangements attributable for purposes of applying its

local television ownership rules.<sup>59</sup> As noted above, the Commission's "competition goal seeks to ensure that for each television market, numerous strong rivals are actively engaged in competition for viewing audiences."<sup>60</sup> Accordingly, in the case of radio JSAs, for example, in addition to the potential impact on influence and control over the brokered station a radio JSA conferred on the brokering station, an important factor in the Commission's attribution decision was its recognition of the "threat to competition" posed by such agreements.<sup>61</sup> The Commission found that radio JSAs give one radio station owner "the ability potentially to exercise market power" and convey advantages to the participating stations in how they sell advertising "not available to other broadcasters in the market."<sup>62</sup> Moreover, the Commission found that a basis for attribution is the fact that JSAs "raise concerns regarding the ability of smaller broadcasters to compete, and may negatively affect the health of the local radio industry generally."<sup>63</sup> For similar reasons, the Commission later proposed deeming television JSAs attributable:

Beyond the issue of potential influence by a JSA broker over a brokered station's operations, which alone may warrant attribution, the unattributable nature of JSAs could lead to the exercise of market power by brokering stations and raise related competition concerns. In the [2002 Biennial Review Order], in addressing local TV ownership, the Commission stated, "our competition goal seeks to assure that for each TV market, numerous strong rivals are actively engaged in competition for viewing audiences."<sup>64</sup>

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<sup>59</sup> 2002 Biennial Review Order ¶ 321; 2004 TV JSA Attribution NPRM ¶ 15. See also 2002 Biennial Review Order ¶ 319 n. 695 (discussing decision in 1999 Attribution Order to address the possibility that JSAs "could threaten competition" by retaining the "discretion to review cases involving radio or television JSAs on a case-by-case basis if it appeared that such JSAs pose competition or other concerns."); Shareholders of the Ackerly Group, Inc., (Transferor) and Clear Channel Corp. (Transferee), Memorandum Opinion and Order 17 FCC Fcd 10828 (2002).

<sup>60</sup> 2002 Biennial Review Order ¶ 150.

<sup>61</sup> *Id.* ¶ 321.

<sup>62</sup> *Id.* ¶ 319.

<sup>63</sup> *Id.*

<sup>64</sup> 2004 TV JSA Attribution NPRM ¶ 15.

Thus the Commission has explicitly recognized that attribution may be appropriate in instances beyond the issue of potential for influence where arrangements for coordinated activity by separately owned same-market stations could “lead to the exercise of market power” and “raise related competition concerns.”<sup>65</sup> In such cases, the Commission looks to determine whether arrangements may raise broader competition concerns regarding the ability of non-participating broadcasters to compete that “may negatively affect the health” of the local broadcast industry in general.<sup>66</sup> Arrangements that replaced competition had the potential to lessen competition in the local broadcast market provided justification for both the Commission’s 2002 decision to attribute radio JSAs and its 2004 proposal to attribute television JSAs.<sup>67</sup> The Commission has explained that taking this step was necessary if its broadcast attribution rules were to “function effectively and accurately to identify all interests that are relevant to the underlying purposes of the multiple ownership rules and that should therefore be counted in applying those rules.”<sup>68</sup>

Similar concerns about the impact on competition were voiced by DOJ in connection with the Commission broadcast ownership and attribution rules. In 1997, the DOJ filed an extensive submission in the Commission’s media ownership proceedings, including the attribution rulemaking, focusing on this point in its recommendation to the Commission that it deem same market JSAs attributable on the basis of their competitive similarity to common equity ownership.<sup>69</sup> Failure to treat

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 2002 Biennial Review Order ¶¶ 319-320; 2004 TV JSA Attribution NPRM ¶ 15.

<sup>68</sup> 1999 Attribution Order ¶ 85.

<sup>69</sup> Letter to Reed E. Hundt, Chairman, Federal Communications Commission from Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, U.S. Department of Justice, MM Docket Nos. 91-221; 87-7; 94-150; 92-51 and 87-154, May 8, 1997, at 2, 7-10 (“DOJ Letter”). In its comments, DOJ focused on radio station JSAs, but the principles discussed would appear the same for same market broadcasters operating under JSAs and similar sharing agreements.

JSAs as attributable, DOJ warned, “could provide opportunities for parties to circumvent any competitive purposes of the multiple ownership limits of the 1996 Act.”<sup>70</sup>

The coordination of retransmission consent among separately owned same-market broadcasters could take various forms. As ACA has demonstrated, not only may instances of coordinated negotiations occur through formal agreements by which one broadcaster negotiates on behalf of another broadcaster, but it may also occur through less formal coordination of negotiations, such as where broadcasters directly communicate with one another and agree to follow a collective course of action, although each broadcaster negotiates on its own.<sup>71</sup> While “influence or control” might be less obvious in such situations, the Commission has recognized that the capturing of these types of arrangements that go “[b]eyond the issue of potential influence” under its attribution rules is necessary to prevent the lessening of competition through private agreements in local television markets.

Stations coordinating their retransmission consent negotiations are able to lessen competition in the market, and command significantly higher fees for carriage solely through the exercise of increased market power and regardless of other factors such as audience share.<sup>72</sup> Therefore, licensees of stations subject to sharing agreements that facilitate coordinated negotiations have less incentive to maintain or attain significant competitive standing in the market, reducing the level of local competition.

Unless these other informal arrangements that facilitate increasing market power are attributed, the potential for (and the reality of) rule evasion will undermine the operation of the Commission’s broadcast ownership limits and allow stations to less local broadcast competition by replacing competition with collusion for the purpose of increasing sales fees. Because the potential

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<sup>70</sup> DOJ Letter at 2. In addition, DOJ recommended that “to facilitate effective monitoring of these agreements, the Commission should impose notification and filing requirements for all radio JSAs,” and “establish a notification and filing requirement for television LMAs.” *Id.* at 4.

<sup>71</sup> ACA Retrans Comments at 20-21; ACA Retrans Reply Comments at 21-46; Rogerson II at 11-12.

adverse competitive effects, the Commission should deem attributable informal arrangements between separately owned same-market broadcast television stations to coordinate their negotiation of retransmission consent. This measure is fully necessary to preclude evasion of the limits on consolidation of more than one top four rated station and duopoly ownership its local television ownership rule.<sup>73</sup>

**C. The Harm to Competition and the Degree of Influence Over Another Station Conveyed by Sharing Agreements Outweighs the *De Minimis* Benefit To Local Broadcasters of Agreements That Facilitate the Coordination of Retransmission Consent**

The Commission uses a balancing test in making its attribution determinations, and attributing agreements only upon a finding that the harms to competition outweigh the potential benefits of the various combinations of interests.<sup>74</sup>

Although we continue to believe that JSAs may have some positive effects on the local radio industry, we find that the threat to competition and the potential impact on the influence over the brokered station outweighs any potential benefits and requires attribution. As with our decision in 1992 to attribute radio LMAs, we find that modification of our regulation also is warranted given the need for our attribution rules to reflect accurately competitive conditions of today's local radio markets. We noted then, and it still holds true today, that it would be inconsistent with our rules to allow a local station owner to substantially broker a station, whether pursuant to an LMA or JSA, that it could not own under the local radio ownership limits.<sup>75</sup>

Changed market conditions warrant attribution of sharing agreements that facilitate coordination of retransmission consent by non-commonly owned same-market broadcasters. Consistent with its position in the retransmission consent reform proceeding, ACA recognizes that some forms of operational sharing agreements among separately owned stations may create

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<sup>73</sup> 47 C.F.R. § 73.3555(b).

<sup>74</sup> 1999 Attribution Order ¶ 123; 2002 Biennial Review ¶ 321.

<sup>75</sup> 2002 Biennial Review Order ¶ 321.

efficiencies that benefit both licensees and the viewing public.<sup>76</sup> ACA has no objection to cooperative activities by local broadcast stations that enable otherwise marginal businesses to take advantage of efficiencies.<sup>77</sup> As ACA's economic expert Professor William P. Rogerson has observed, prohibiting coordinated negotiation of retransmission consent by separately-owned stations would not prevent broadcasters from entering into agreements where one broadcaster transfers control over other aspects of station operations to the management of another station in the DMA, thus preserving the main efficiencies of joint marketing and programming functions.<sup>78</sup> The sole difference under the relief sought by ACA would be the requirement for each station to negotiate its own retransmission consent agreement. The cost savings from combined retransmission consent negotiations is likely to be insignificant compared to the cost savings from combined marketing or programming functions.<sup>79</sup>

ACA takes no position on the question whether or not all forms of sharing agreements should be *per se* attributable; rather, its focus is solely on such agreements to the extent they facilitate the coordinated negotiation of retransmission consent. As ACA has demonstrated, this practice creates negligible operational efficiencies, as compared to sharing studio space or local newsgathering assets, while creating significant competitive harms in the diminution of competition among local television stations, which far outweigh the efficiencies. NAB and other broadcasters have argued elsewhere and are likely to argue in response to the NPRM that coordinated negotiations increase efficiencies for broadcasters by helping lower transaction costs of negotiating retransmission consent agreements.<sup>80</sup> Specifically, NAB has taken the position that (i) coordinated negotiations help reduce

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<sup>76</sup> ACA Retrans Comments at 8; ACA Retrans Reply Comments at 15.

<sup>77</sup> See *In the Matter of Petition for Rulemaking to Amend The Commission's Rules Governing Retransmission Consent*, MB Docket No. 10-71, Reply Comments of the Broadcaster Associations, at 22-23 (filed June 3, 2010) ("Broadcaster Associations Reply Comments"); NAB Retrans NPRM Comments on Retrans at 27-32.

<sup>78</sup> See ACA Retrans Comments at 8, citing Rogerson II at 13.

<sup>79</sup> Rogerson II at 18.

<sup>80</sup> See NPRM ¶¶ 201-203; NAB Retrans NPRM Comments at 27-29; *In the Matter of Amendment of the Commission's Rules related to Retransmission Consent*, Comments of CBS Affiliates, MB Docket No. 10-71, at 19-20 (filed May 27, 2011); *In the Matter of Amendment of the Commission's Rules related to Retransmission*

operating and corporate expenses by lowering transaction costs, thereby reducing the diversion of scarce resources away from programming and services for the public; and (ii) allow expedited completion of agreements by reducing the total number of agreements that must be negotiated, thus lowering administrative burden on broadcasters and MVPDs.<sup>81</sup>

Adoption of an attribution rule that effectively prohibits coordinated retransmission consent negotiations by separately owned Big 4 broadcasters in a single local television market will not disturb other aspects of sharing arrangements that allow stations to achieve operating efficiencies; it will simply address the pervasive collusion now occurring between competing sellers in a market. Moreover, the expected efficiencies from coordinated negotiations are quite modest compared to the cost savings achieved through sharing of other activities such as advertising or studio facilities; they are likely limited to the cost of hiring a negotiator and related administrative expenses. Thus, prohibiting coordinated negotiations under the Commission's broadcast ownership rules will not impact the willingness of broadcasters to continue entering into these pacts, nor materially impact any of the alleged benefits of these arrangements.

Further, these relatively modest savings are entirely outweighed by the significant public interest harms of promoting competition in the local broadcast market.<sup>82</sup> Collusion among competing sellers is always going to be more efficient than non-collusion, but the savings are not likely to be substantial and sound antitrust principles and competition law prohibit this practice in furtherance of the far more important public policy goal of engendering robust competition in local media markets.

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*Consent*, Comments of Sinclair, MB Docket No. 10-71, at 23 (filed May 27, 2011); *In the Matter of Amendment of the Commission's Rules related to Retransmission Consent*, Comments of Nexstar, MB Docket No. 10-71, at 20-21 (filed May 27, 2011); *In the Matter of Amendment of the Commission's Rules related to Retransmission Consent*, Comments of Joint Broadcasters, MB Docket No. 10-71, at 23 (filed May 27, 2011); Notice of Ex Parte Communication from Maureen A. O'Connell, Senior Vice President, Government Relations, News Corp. to Marlene Dortch, Secretary FCC, MB Doc. Nos. 00-168 and 00-44 (filed Feb. 8, 2012).

<sup>81</sup> NAB Retrans NPRM Comments at 27-29.

<sup>82</sup> ACA Retrans Reply Comments at 35-36.

Coordination of retransmission consent among same-market Big 4 affiliates decreases this form of competition because it permits broadcasters to secure higher retransmission consent fees not through increasing programming quality but simply through increased bargaining leverage in retransmission consent negotiations, thus adversely affecting the level of local competition. In lieu of acquiring a second station in the same market, an ownership interest that is prohibited between two top four-rated broadcast stations in a market, broadcasters are simply coordinating their carriage negotiations, a practice which achieves the same end. This diminishes competition among same-market broadcasters.<sup>83</sup> The practical effect of the coordination of retransmission consent negotiations between Big 4 stations under sharing agreements or informal understandings or arrangements is no different than the formation of an actual duopoly by license transfer, an action flatly prohibited under the Commission's rules.

The Media Bureau recently recognized that a transaction involving a sharing agreement gave one broadcaster control over two of the top four stations in the Honolulu, Hawaii market, and that the "net effect" of the transaction was "clearly at odds with the purpose and intent of the duopoly rule."<sup>84</sup> The evidence amassed in this and other proceedings is clear: sharing agreements are being used to evade the local television ownership rules and to effectuate unauthorized transfers of control. Because coordinated retransmission consent negotiations reduce local television competition, this reduction in competition is a factor that the Commission must take into account in determining whether broadcasters are in compliance with local television ownership limits.

Simply put, consistent with its long-standing policy goal of preserving and promoting competition in local television markets through operation of its ownership limits, the time has come for the Commission to put a stop to this end run around its rules in this quadrennial review by explicitly

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<sup>83</sup> See ACA Media Ownership NOI Comments at 6-11.

<sup>84</sup> *In the Matter of KHNL/KGMB Licensee Subsidiary, LLC; Licensee of Stations KHNL (TV) and KGMB(TV), Honolulu, Hawaii and HITV License Subsidiary, Inc.; Licensee of Station KFVE(TV), Honolulu, Hawaii*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16087 ¶¶ 14, 23 (2011).



recognizing the impact on retransmission consent of certain non-equity interests among separately owned top four rated broadcasters in a single DMA and deeming them attributable ownership interests for purposes of its local television ownership limits.

**V. THE COMMISSION SHOULD TAKE A BROAD APPROACH TO ATTRIBUTION OF AGREEMENTS THAT REPLACE COMPETITION WITH COLLUSION AMONG SEPARATELY OWNED SAME-MARKET BROADCASTERS**

Rather than simply determine that certain named sharing agreements, such as shared services agreements (“SSAs”) are attributable, the Commission should adopt a broader regulatory scheme of attribution that encompasses all agreements, however styled, between separately owned same-market broadcasters that facilitate the coordinated negotiation of retransmission consent with an MVPD.<sup>85</sup>

ACA supports a broad regulatory approach to attribution that encompasses all agreements among separately owned same-market broadcasters, however styled, that facilitate the coordinated negotiation of retransmission consent. Consistent with its comments supporting placement of such agreements in the broadcast stations’ enhanced online public files, ACA submits that great care must be taken in defining the types of behavior covered by the attribution rule, lest rule evasion continue at its current pace.<sup>86</sup> In the past, the Commission has attributed specific types of sharing agreements to prevent evasion of ownership rules designed to protect and promote local broadcast competition. Nonetheless, rule evasion through coordinated action by separately owned same-market stations has continued unchecked simply by use of differently styled agreements or by entering into less formal agreements to coordinate retransmission consent sales efforts rather than compete against one another.

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<sup>85</sup> See NPRM ¶ 207.

<sup>86</sup> See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast licensee Public Interest Obligations*, Comment of the American Cable Association, MM Doc. No. 00-168, MM Doc. No. 00-44, at 11-20 (filed Dec. 22, 2011).

The Commission carefully delineate the behaviors described in its new attribution rule to ensure that the rule clearly applies to all forms of coordinated behavior by separately owned same-market television stations. For the reasons stated above in Section IV, the revised attribution rule must encompass both formal agreements, however styled, and also more informal methods of coordination where broadcasters directly communicate with one another and agree to follow a collective course of action that maximizes their joint profits as an ownership interest would, but the arrangement is not enforced by a formal agreement where one non-commonly broadcaster gives the other station authority to negotiate retransmission consent on its behalf with an MVPD.

To put a decisive end to the competitive and public interest harms engendered by coordinated retransmission consent negotiations on the part of separately owned same-market broadcasters, the Commission should explicitly recognize as creating an attributable interest a broadcaster engaging in any of the following practices:

- Delegation of the responsibility to negotiate or approve retransmission consent agreements by one broadcaster to another separately owned broadcaster in the same DMA;
- Delegation of the responsibility to negotiate or approve retransmission consent agreements by two separately owned broadcasters in the same DMA to a common third party;
- Any informal or formal agreement pursuant to which one broadcaster would enter into a retransmission consent agreement with an MVPD contingent upon whether another separately owned broadcaster in the same market is able to negotiate a satisfactory retransmission consent agreement with the same MVPD; and
- Any discussions or exchanges of information between separately owned broadcasters in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.

#### **VI. THE COMMISSION SHOULD DECLINE TO GRANDFATHER EXISTING AGREEMENTS THAT MAY AFFECT BROADCAST LICENSEES COMPLIANCE WITH LOCAL TELEVISION OWNERSHIP RULES**

The NPRM asks whether, if the Commission adopts new attribution rules, it should grandfather existing agreements.<sup>87</sup> Consistent with the Commission's treatment of radio JSAs

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<sup>87</sup> NPRM ¶ 205.

declared attributable in the 2002 Biennial Review Order, the answer is, no. Newly attributable agreements that give one broadcaster the authority to negotiate retransmission consent on behalf of another should not be grandfathered. Rather, stations currently party to such agreements must immediately terminate them. Likewise, broadcasters that are engaging in other practices that facilitate the coordination of retransmission consent must be required to immediately cease and desist from further behavior.

In its 2002 Biennial Review Order, the Commission declined to grandfather existing agreements made newly attributable under the order, but, to avoid unnecessarily disrupting existing business arrangements between licensees and brokers, gave licensees sufficient time to make alternative business arrangements.<sup>88</sup> In that case, licensees were given two years to terminate the agreements or otherwise come into compliance with the local radio ownership rules adopted in the proceeding. However, unlike the disorder that would likely result from an immediate termination of a JSA for a broadcaster who sells advertising on day-to-day basis, the immediate and significant disruption of business arrangements in the case of a broadcaster that coordinates their retransmission consent negotiations with another station is unlikely by virtue of the fact that retransmission consent is negotiated only periodically – that is, once every three years pursuant the statute and Commission rules.<sup>89</sup> The most recent retransmission consent cycle began in October 2011 and has recently concluded for most stations. For this reason, the Commission should immediately require non-commonly owned Big 4 stations in a single DMA to cease and desist from coordinating retransmission consent negotiations on behalf of more than one local television stations.

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<sup>88</sup> 2002 Biennial Review Order ¶ 325.

<sup>89</sup> 47 U.S.C. 325(b)(3)(B); 47 C.F.R. § 76.64(f)(2).

**VII. THE COMMISSION SHOULD ADDRESS THE COMPETITIVE IMPACT OF AGREEMENTS THAT FACILITATE COORDINATION OF RETRANSMISSION CONSENT NEGOTIATIONS BY SEPARATELY OWNED STATIONS IN THIS PROCEEDING**

The NPRM questions whether the issue of the impact of coordinated retransmission consent negotiations is more appropriately considered in another context, such as the retransmission consent reform proceeding.<sup>90</sup> ACA strongly urges the Commission to avoid delay in addressing this practice by acting expeditiously in this proceeding.

The pendency in a separate rulemaking of reforms to the Commission's good faith negotiation rules does not mean either that the Commission cannot or should not also address the practice of coordination of retransmission consent negotiations among rival sellers in a local market in this quadrennial media ownership review. Irrespective of whether the practice is first barred in the context of the local television ownership and broadcast attribution rules, or the Commission's retransmission consent good faith rules, it is incumbent upon the Commission to ensure that the public interest is not being harmed through diminished competition in local broadcast markets through the coordination of retransmission consent negotiations. This quadrennial review clearly presents the Commission with an appropriate vehicle for putting an end to the rampant covert consolidation among local broadcast stations through its broadcast ownership and attribution rules, and ACA respectfully submits that the Commission should seize the opportunity and run with it.

**VIII. CONCLUSION**

ACA supports the Commission's conclusion that retaining its local broadcast ownership rules is necessary because they continue to serve the important public interest goals of promoting competition, localism and diversity. In furtherance of its statutory charge to update the local television ownership rules to reflect changed circumstances, the Commission must act in *this proceeding* to broaden the definition of attributable interests to address the reality that separately owned, same-market broadcasters coordinated retransmission consent negotiations to lessen competition among

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<sup>90</sup> NPRM ¶ 207.

themselves, and by so doing undermine the intent and effectiveness of the Commission's broadcast ownership restrictions to promote competition in local markets. A failure to immediately end these collusive practices would embolden broadcasters to continue to employ these and similar brazen practices for evading the Commission's carefully calibrated local television ownership rules. The time has come for the Commission to act decisively to end these practices, end the gaming of its broadcast ownership rules, and return some semblance of competition to local markets where broadcaster collusion remains open, notorious, and unchecked.

Respectfully submitted,

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## **APPENDIX A**

### **TABLE 1**

## 62 Instances of Separately Owned, Same-Market Broadcasters Affiliated with a Big 4 Network Operating Under Some Form of Sharing Agreement

DMA	DMA Rank	Station #1			Station #2		
		Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Columbus, OH	32	Sinclair Broadcast Group	WSYX	ABC	Cunningham Broadcastng	WTTE	FOX
West Palm Beach-Ft. Pierce	38	E.W. Scripps	WPTV	NBC	Raycom Media	WFLX	FOX
Jacksonville	50	Newport Television	WAWS	FOX	High Plains Broadcasting	WTEV	CBS
Providence-New Bedford	53	LIN TV	WPRI	CBS	Super Towers	WNAC	FOX
Wilkes Barre-Scranton-Hztn	54	Nexstar Broadcasting Group	WBRE	NBC	Mission Broadcasting	WYOU	CBS
Ft. Myers-Naples	62	Waterman Broadcasting	WBBH	NBC	Montclair Communications	WZVN	ABC
Dayton	63	Sinclair Broadcast Group	WKEF	ABC	Cunningham Broadcastng	WRGT	FOX
Charleston-Huntington	65	Sinclair Broadcast Group	WCHS	ABC	Cunningham Broadcastng	WVAH	FOX
Tuscon (Sierra Vista)	70	Raycom Media	KOLD	CBS	Belo	KMSB	FOX
Honolulu	71	Raycom Media	KHNL	NBC	MCG Capital	KGMB	CBS
Springfield, MO	75	Schurz Communications	KYTV	NBC	Perkin Media	KSPR	ABC
Rochester, NY	79	Nexstar Broadcasting Group	WROC	CBS	Sinclair Broadcast Group	WUHF	FOX
Syracuse	84	Barrington Broadcasting	WSTM	NBC	Granite Broadcasting	WTVH	CBS
Cedar Rapids-Wtrlo-IWC&Dub	89	Sinclair Broadcast Group	KGAN	CBS	Second Generation of Iowa	KFXA	FOX
El Paso (Las Cruces)	91	Communication Corp of America	KTSM	NBC	Titan TV Broadcast Group	KDBC	CBS
Savannah	92	New Vision Television	WJCL	ABC	Parkin Broadcasting	WTGS	FOX
Baton Rouge	94	Communication Corp of America	WGMB	FOX	White Knight Broadcasting	WVLA	NBC
Burlington-Plattsburgh	95	Smith Media	WFFF	FOX	Lambert Broadcasting	WVNY	ABC
Tri-Cities, TN-VA	96	Bonten Media Group	WCYB	NBC	Esteem Broadcasting	WEMT	FOX
Greenville-N. Bern-Washngtn	99	Bonten Media Group	WCTI	ABC	Esteem Broadcasting	WFXI	FOX
Johnstown-Altoona-St Colge	102	Peak Media	WWCP	FOX	Palm Television	WATM	ABC
Lincoln & Hastings-Krny	105	Pappas Telecasting	KHGI	ABC	Omaha World-Herald	KFXL	FOX
Tyler-Longview(Lfkn&Ncgd)	107	Communication Corp of America	KETK	NBC	White Knight Broadcasting	KFXK	FOX
Fort Wayne	109	Granite Broadcasting	WISE	NBC	Malara Broadcasting Group	WPTA	ABC
Youngstown	110	New Vision Television	WKBN	CBS	Parkin Broadcasting	WYTV	ABC
Augusta-Aiken	111	Media General	WJBF	ABC	Schurz Communications	WAGT	NBC
Peoria-Bloomington	116	Granite Broadcasting Crop.	WEEK	NBC	Barrington Broadcasting	WHOI	ABC
Peoria-Bloomington	116	Nexstar Broadcasting Group	WMBD	CBS	Sinclair Broadcast Group	WYZZ	FOX
Fargo-Valley City	117	Hoak Media	KVLY	NBC	Parker Broadcasting	KXJB	CBS
Traverse City-Cadillac	120	Barrington Broadcasting	WPBN	NBC	Tucker Broadcasting	WGTV	ABC
Traverse City-Cadillac	120	Heritage Broadcasting Group	WWTV	CBS	Cadillac Telecasting	WFQX	FOX
Monterey-Salinas	125	Cowles Publishing	KION	CBS	Seal Rock Broadcasters	KCBA	FOX
Columbus, GA (Opelika, AL)	127	Raycom Media	WTVM	ABC	Southeastern Media Holdings	WXTX	FOX
Corpus Christi	129	Cordillera Communications	KRIS	NBC	SagamoreHill Broadcasting	KZTV	CBS
Amarillo	130	Nexstar Broadcasting Group	KAMR	NBC	Mission Broadcasting	KCIT	FOX
Wilmington	132	Raycom Media	WECT	NBC	Southeastern Media Holdings	WSFX	FOX

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DMA	DMA Rank	Station #1			Station #2		
		Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Columbus-Tupelo-W Pnt-Hstn	133	WTVA, Inc.	WTVA	NBC	Southern Broadcasting	WKDH	ABC
					Lingard Broadcasting	WLOV	FOX
Rockford	134	Nexstar Broadcasting Group	KQRF	FOX	Mission Broadcasting	WTVO	ABC
Topeka	136	New Vision Television	KTKA	ABC	Parkin Broadcasting	KSNT	NBC
Monroe, LA-El Dorado	137	Hoak Media	KNOE	CBS	Parker Broadcasting	KAQY	ABC
Monroe, LA-El Dorado	137	Nexstar Broadcasting Group	KARD	FOX	Mission Broadcasting	KTVE	NBC
Duluth-Superior	139	Granite Broadcasting	KBJR	NBC	Malara Broadcast Group	KDLH	CBS
Wichita Falls & Lawton	142	Nexstar Broadcasting Group	KFDX	NBC	Mission Broadcasting	KJTL	FOX
Wichita Falls & Lawton	142	Drewry Broadcast Group	KSWO	ABC	Hoak Media	KAUZ	CBS
Lubbock	143	Nexstar Broadcasting Group	KLBK	CBS	Mission Broadcasting	KAMC	ABC
Erie	146	Nexstar Broadcasting Group	WJET	ABC	Mission Broadcasting	WFXP	FOX
Erie	146	SJL of Pennsylvania	WICU	NBC	Lilly Broadcasting	WSEE	CBS
Sioux City	147	Titan TV Broadcast Group	KPTH	FOX	Waitt Broadcasting	KMEG	CBS
Anchorage	148	Coastal Television Broadcasting	KTBY	Fox	Vision Alaska	KYUR	ABC
Joplin-Pittsburg	149	Nexstar Broadcasting Group	KSNF	NBC	Mission Broadcasting	KODE	ABC
Joplin-Pittsburg	149	Saga Communications	KOAM	CBS	Surtsey Media	KFJX	FOX
Rochestr-Mason City-Austin	153	Quincy Newspapers	KTTC	NBC	SagamoreHill Broadcasting	KXLT	FOX
Terre Haute	154	Nexstar Broadcasting Group	WTWO	NBC	Mission Broadcasting	WFXW	FOX
Idaho Fals-Pocatllo(Jcksn)	160	Intermountain West Communications	KPVI	NBC	Compass Communications	KFXP	FOX
Idaho Fals-Pocatllo(Jcksn)	160	News-Press & Gazette	KIFI	ABC	Fisher Comuncations	KIDK	CBS
Abilene-Sweetwater	164	Nexstar Broadcasting Group	KTAB	CBS	Mission Broadcasting	KRBC	NBC
Billings	168	Nexstar Broadcasting Group	KSVI	ABC	Mission Broadcasting	KHMT	FOX
Utica	172	Nexstar Broadcasting Group	WFXV	FOX	Mission Broadcasting	WUTR	ABC
Grand Junction-Montrose	184	Hoak Media	KREX	CBS	Parker Broadcasting	KFQX	FOX
Casper-Riverton	196	Mark III Media	KGWC	CBS	Silverton Broadcasting	KTWO	ABC
					Wyomedia	KFNB	FOX
San Angelo	197	Nexstar Broadcasting Group	KLST	CBS	Mission Broadcasting	KSAN	NBC
Victoria	204	Saga Communications	KAVU	ABC	Surtsey Media	KVCT	FOX

### PENDING STATION SALE APPROVAL

Toledo, OH	74	Raycom Media	WTOL	CBS	American Spirit Media	WUPW	FOX
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Note- Yellow Highlight Denotes Instance Not Previously Identified by ACA



## **APPENDIX A**

### **TABLE 2**

**46 Instances of Separately Owned, Same-Market Broadcasters Affiliated with a Big 4 Network  
Simultaneously Negotiating Retransmission Consent With an MVPD Using a Single Representative**

		Station #1			Station #2		
DMA	DMA Rank	Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Columbus, OH	32	Sinclair Broadcast Group	WSYX	ABC	Cunningham Broadcastng	WTTE	FOX
Jacksonville	50	Newport Television	WAWS	FOX	High Plains Broadcasting	WTEV	CBS
Providence-New Bedford	53	LIN TV	WPRI	CBS	Super Towers	WNAC	FOX
Wilkes Barre-Scranton-Hztn	54	Nexstar Broadcasting Group	WBRE	NBC	Mission Broadcasting	WYOU	CBS
Dayton	63	Sinclair Broadcast Group	WKEF	ABC	Cunningham Broadcastng	WRGT	FOX
Charleston-Huntington	65	Sinclair Broadcast Group	WCHS	ABC	Cunningham Broadcastng	WVAH	FOX
Springfield, MO	75	Schurz Communications	KYTV	NBC	Perkin Media	KSPR	ABC
Cedar Rapids-Wtrlo-IWC&Dub	89	Sinclair Broadcast Group	KGAN	CBS	Second Generation of Iowa	KFXA	FOX
Savannah	92	New Vision Television	WJCL	ABC	Parkin Broadcasting	WTGS	FOX
Baton Rouge	94	Communication Corp of America	WGMB	FOX	White Knight Broadcasting	WVLA	NBC
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Johnstown-Altoona-St Colge	102	Peak Media	WWCP	FOX	Palm Television	WATM	ABC
Lincoln & Hastings-Krny	105	Pappas Telecasting	KHGI	ABC	Omaha World-Herald	KFXL	FOX
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Rockford	134	Nexstar Broadcasting Group	KQRF	FOX	Lingard Broadcasting	WLOV	FOX
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Abilene-Sweetwater	164	Nexstar Broadcasting Group	KTAB	CBS	Mission Broadcasting	KRBC	NBC
Billings	168	Nexstar Broadcasting Group	KSVI	ABC	Mission Broadcasting	KHMT	FOX
Casper-Riverton	196	Mark III Media	KGWC	CBS	Silverton Broadcasting	KTWO	ABC
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